Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. ____

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 20____

Charles L. Meyer, Petitioner

V.

The United States of America, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Charles L. Meyer
Petitioner Pro Se
355 Pinewood Lane
San Antonio, Texas 78216
(210) 828-1913

QUESTIONS PRESENTED FOR REVIEW

1. Both lower Courts held that the Trial Court Docket No. 97-379C dismissal based on the 1986 Federal Circuit Hurick decision represents law of the case doctrine. The Petitioner argued exceptions to the law of the case doctrine for the issue of a change in the law.

2. The issue of when does a legal action first accrue.

3. The Petitioner rebutted the Trial Court's reasons to dismiss which were cited in its Order to dismiss and were repeated in the Federal Circuit's Order to Affirm.

4. Both lower Courts disregarded the Petitioner's citation of the U. S. Supreme Court law principle decisions to support his legal arguments.

5. Courts are required to accept the pleadings of a Pro Se litigant.

6. The Trial Court made many judicial errors or in the alternative abuses of discretion in dismissing the Plaintiff's legal action.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

Charles L. Meyer, Petitioner Pro Se.

The United States of America, Respondents.

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IN THE SUPREME COURT

OF THE UNITED STATES

October Term, _____

Charles L. Meyer, Petitioner Pro Se,

v.

The United States of America, Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT

OF APPEALS FOR THE FEDERAL CIRCUIT

Charles L. Meyer, the Petitioner Pro Se herein, respectfully prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Federal Circuit which was entered as a Mandate in the above-entitled case on May 22, 2000.

OPINIONS BELOW

The Order of the Federal Circuit filed April 3, 2000 Affirmed the Trial Court Order filed October 26, 1999 which dismissed the Plantiff's Complaint. The Federal Circuit incorporated this Trial Court Order into its Order to Affirm. This Federal Circuit decision is included infra at Appendix A Pages 1--6. The Federal Circuit Order filed May 15, 2000 denied the Appellant's Petition for Rehearing. This Federal Circuit Order is included infra at Appendix B Pages 1--2. The Federal Circuit Published its Order of Judgment as a Mandate on May 22, 2000. This Federal Circuit Order of Judgment is included infra at Appendix C Pages 1--2. The Federal Circuit Deputy Clerk's Letter Notice of Rejection dated June 1, 2000 rejected the Appellant's second Petition for Rehearing. This Federal Circuit Deputy Clerk's Letter is included infra at Appendix B Pages 3--4. The Appellant filed a Motion to Reconsider this Deputy Clerk's Letter Notice of Rejection on June 8, 2000. The Federal Circuit Court Clerk letter dated June 20, 2000 rejects the Appellant's

Motion to Reconsider and states that the his Appeal before the Federal Circuit is over. This Federal Circuit Court Clerk's letter dated June 20, 2000 is included infra at Appendix B Page 5. On July 14, 2000 Chief Justice William B. Rehnquest granted the Petitioner's corrected application for an extension of time to file this Petition for Writ of Certiorari with the U. S. Supreme Court. Application Number 00A38 extends the time to file this Petition for Writ of Certiorari to and including September 12, 2000.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered as a Mandate on May 22, 2000. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 2101 (c).

STATUTE INVOLVED

The first Paragraph of 28 U. S. C. § 2501 reads:

Time for filing suit

> Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years

after the claim first accrues.

STATEMENT OF THE CASE

The Plaintiff conditioned his Trial Court legal action on the second of two injuries to him by the U. S. Government which occurred on June 3, 1994 (Trial Court Appendix F-3) and filed his legal action within six years after that date. The Plaintiff's Trial Court legal action was not available in a previous suit, Florida Power & Light Co.. Infra, and is based on a change in controlling law (Trial Court Appendix A-3), Boeing v. U. S., 31 Fed.Cl. 289 (1994). The Plaintiff cited American Trucking Associations v. Smith, 110 S.Ct. 2323, 2341, 2343, 496 U. S. 167, 110 L.Ed.2d 149 (1990) for his legal remedy to correct this change in the law. The U. S. Air Force on June 3, 1994 deleted from its applicable Air Force Board of Correction of Military Records (AFBCMR) written directive the second of two criteria which the Plaintiff used in his original records correction application to this Correction Board which he submitted to it in 1970 which it denied

on April 5, 1971. The Petitioner's original records correction application stated that his Officer Effectiveness Reports (OERs) between the reporting periods which ended July 31, 1965 through July 31, 1970 were incorrectly prepared. The applicable written directives (Trial Court Appendices B-3 and H-1) required the Reporting Official to prepare each OER correctly. The Correction Board was required to invalidate each OER when the records correction Applicant provided that it was incorrectly prepared. This previous written directive which the Petitioner used was dated February 18, 1970. The American Trucking Associations decision, supra, permits the law to be applied retroactively to correct any injustice which has occurred because of a change in the law. Within each Armed Service a written directive has the effect of being law. This law principle is specified at United States Fidelity and Guaranty Corp. v. Guenther, 281 U. S. 34, 50 S.Ct. 165, 167 (1930). The Plaintiff requested the Trial Court to vacate the two AFBCMR requests

for reconsideration dated February 5 and April 21, 1997 and remand to this Correction Board to be reconsidered. The Trial Court instructions for remand to the AFBCMR would state that this Correction Board would reaccomplish the Plaintiff's two requests for reconsideration in accordance with the Air Force written directives which were in effect at the time the Plaintiff submitted his original records correction application in 1970.

REASONS FOR GRANTING THE WRIT

I.

Exceptions to the law of the case doctrine

The Federal Circuit incorporated the Trial Court decision to dismiss the Plaintiff's legal action filed October 26, 1999 in its decision to Affirm this decision which was filed on April 3, 2000. This Trial Court decision which is based on the earlier Trial Court Docket No. 97-379C decision which cited Hurick, infra, conveys the perception that the Trial Court Docket No. 97-379C decision constitutes law of the case doctrine. The Petitioner pleaded

before both lower Courts exceptions to the law of the case doctrine based on J.E.T.S. Inc. v. U. S., 838 F.2d 1196, 1199, 1200 (Fed. Cir. 1988), cert. den., 486 U. S. 1057, 100 L.Ed.2d 926 (1988). The Plaintiff's Trial Court Motion to Reconsider supplemented this averment with the following legal arguments. The Plaintiff cited Ulmet v. U. S., 17 Cl.Ct. 679 (1989) which stated that under the law of the case doctrine, decision on issues of law made at one phase of litigation becomes binding predent to be followed in successive stages of same case. This Motion to Reconsider also cited Adams v. U. S., 42 Fed. Cl. 463 (1998) which states that previous decisions in this Trial Court, although persuasive and helpful, do not constitute binding precedent for other decisions in this Trial Court. The Plaintiff's Trial Court Motion to reconsider also cited Florida Power & Light Co. v. U. S., 41 Fed.Cl.477 (1998) for the doctrine of stare decisis which compels lower courts to follow the decisions of higher courts on questions of law.

II.

The issue of when does a legal action first accrue.

The Docket No. 99-CV-895 Trial Court dismissed the Plaintiff's Complaint based on the previous Docket No. 97-379C Trial Court dismissal which was based on Hurick v. Lehman, 782 F.2d 984, 986 (Fed. Cir. 1986). Hurick held that a serviceman has six years after his date of discharge from the Armed Service to file a legal action to legally question his discharge. This Trial Court held that the Plaintiff's Complaint was untimely filed since he waited more than six years after the date of his discharge as an Officer from the Air Force Reserve in August, 1971. The important issued of the Hurick decision is that its law principle states "a legal action accrues". The Plaintiff conditioned his legal action on the second of two injuries to him which occurred on June 3, 1994 and filed his legal action before this Trial Court on October 26, 1999 pursuant to the first Paragraph of 28 U. S. C. § 2501. The Plaintiff based his Trial Court on the following legal

arguments. Hopland Band of Pomo Indians v. U. S., 842 F.2d 1573, 1577 (Fed. Cir. 1985) for the issue of when does a claim against the U. S. Government "first accrues". "[4, 5] It is generally stated that a claim 'first accrues' when all events have occurred which fix the alleged liability of the defendant and entitle the plaintiff to initiate an action. . . ." The Petitioner cited before lower Courts this same averment with the citation of U. S. v. Cocoa Berkau, Inc., 990 F.2d 610 (Fed. Cir. 1993) and U. S. v. Commodities Export Co., 972 F.2d 1266, 1270 (Fed. Cit. 1982) which were stated in general terms. Both lower Courts disregarded this averment since the Petitioner did not state a citation with quotation marks. The Petitioner cited Haines v. Kerner, 404 U. S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972) for this law principle. The pleadings of a Pro Se litigant are held to less stringent standards than formal pleadings drafted by Attorneys. For this Petition the Petitioner offers the actual U.S. v. Cocoa Berkau, Inc. Court decision. "[3, 4] The law is

well settled that, as a general rule, a claim does not accrue until all events necessary to fix the liability of a defendant have occurred.[2] (Footnote 2 omitted.). . . United States v. Commodities Export Co., 972 F.2d 1266, 1270 (Fed. Cir. 1992) ('[A] cause of action accrues when all events necessary to state a claim have occurred.) . . ." Therefore, the Plaintiff could not file this Trial Court legal action until after the U. S. Government committed its second injury to him on June 3, 1994.

The Plaintiff supplemented this issue of when does a legal action first accure before the Trial Court by citing Bay Area Laundry v. Ferbar Corp. of Cal., Inc., 118 S.Ct. 542, 546, 549 (1997). "[1, 2]. . . A limitations period ordinarily does not begin to run (i. e., accrue) until the plaintiff has a 'complete and present cause of action.' . . .

. . .

[5] . . . a cause of action does not become complete until the plaintiff can file suit and obtain relief. See Reiter v. Cooper,

507 U. S. 258, 267, 113, S.Ct. 1213, 1220, 122 L.Ed.2d 604 (1993). . . ."

A coordinate issue to the arguments presented supra for the defense of limitations was made before both lower Courts. The Trial Court relied on the 1986 Federal Circuit Hurick decision. The Plaintiff relied on the 1985 Federal Circuit Hopeland Band of Pomo Indians decision. The Petitioner cited before both lower Courts Newell Companies, Inc. v. Kenney Mfg. Co., 864 F.2d 757, 765 (Fed. Cir. 1988). "[2-3] . . . Where there is a direct conflict (i. e., between different Federal Circuit decisions), the precedent decision is the first . . . ." The Plaintiff's citation of the Hopland Band of Pomo Indians decision is one year earlier than the Court's reliance on the Hurick decision.

The Plaintiff's Trial Court Motion to reconsider cited Friedman v. U. S., 157 Ct.Cl. 1, 310 F.2d 381, 385 (1982) which delineates the difference between the original event which occurred and a second event by a Federal Agency which occurred

at a subsequent date which causes a legal action to accrue. Friedman is a medical disability retirement legal action but expounded the law for the deliberations by an administrative agency for non-disability retirement legal actions. Friedman stated: "[4-7] . . . the court has applied another principle in a different type of case. That second principle governs situations where the Congress has deliberately given an administrative body the function of deciding all or part of the claimant's entitlement, i.e., where Congress has interposed an administrative tribunal between the claimant and the court. In those instances the claim does not accrue until the executive body has acted (if seasonably asked to act). So also where Congress has insisted that a special demand be made or a special application filed. . . . -but once the court has decided that the case falls into the former class (i.e., Cases other than disability retirement cases) it has ruled that the claim accrues, not when the events occurred but when the agency has rendered its determination.

Like the 'continuing claim' theory, the second principle fits with general limitations law which recognized that in appropriate cases conditions precedent to the accrual of a cause of action can be established by statute, contract, or common law, and that where such a condition precedent has been created the claim does not ripen until the condition is fulfilled. . . ." The Petitioner for this Petition cites Supreme Court Rule 10. (a) for reference. The Tenth Circuit has decided a case on the same law principle but for a different subject matter. The Petitioner was unable to find any other U. S. Court of Appeals decision for this same law principle. The Petitioner cites Smith v. Marsh, 787 F.2d 510 (10th Cir. 1986). A former soldier's action charging that the Army Discharge Review Board and the Army Board for Correction of Military Records unlawfully refused to upgrade his dishonorable discharge accrued at the time of ABCMR decision not at time of discharge, and thus, action brought within six years of ABCMR decision was timely. 28 U.S.C.A. § 2401 (a).

III.

The Petitioner rebutted the Trial Court's reasons which were cited in its Order to dismiss and repeated in the Federal Circuit's Order to Affirm.

The Petitioner pleaded the following cited Court decisions before both lower Courts to rebut the legal argument that Res Judicata applies to his dismissed Trial Court legal action. The Petitioner cited Cooter v. Gell and Harmax Corp., 110 S.Ct. 2447, 2456, 496 U.S. 384, 119 L.Ed.2d 359 (1990). "[15-17] . . . '[D]ismissal . . . without prejudice' is a dismissal that does not 'operat[e] as an adjudication upon merits.' and thus does not have a res judicata effect' . . . " A litigant may file a successor legal action to a legal action which was dismissed for procedural error provided the appropriate statute of limitations has not been exceeded. See Florida Power & Light Co. v. U. S., 41 Fed.Cl. 477, 484(1988). "[12-13] A second suit will not be precluded if

it asserts a cause of action that was not yet available when a decision was rendered in a previous suit, even though that cause of action may arise from the same transaction or series of transactions that give rise to the first suit. See Everett Plywood Corp. v. United States, 206 Cl.Ct. 244, 251, 512 F.2d 1087 (1975). . . ." Allen v. McMurry, 101 S.Ct. 411, 414, 415, 449 U.S. 90, 60 L.Ed.2d 308 (1980) addresses a related law principle to res judicata. "[1-4] The Federal courts have traditionally adhered to the related doctrine of res judicata and collateral estoppel . . . .

[5] . . . But one general limitations the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue in the earlier case . . . ."

The Plaintiff did not plead the tolling of the statute of limitations before the Trial Court. The Trial Court's citation of

Aubre v. United States, 40 Fed.Cl. 371 (1998) is not germane to the Trial Court legal action. Aubre was a medical disability retirement legal action. See Aubre synopsis, Ibid. at Pages 372--373. The Plaintiff's legal action is a non-disability retirement by reason of years of completion of service.

The Trial Court erred by stating that in Docket No. 97-379C the Plaintiff had a full and fair opportunity to litigate the statute of limitations before the Trail Court. The Plaintiff specified the conditioning of that legal action on the second of two injuries to him by the U. S. Government in a subsequent pleading to his Complaint. The Plaintiff's legal research did not find this Court decision until the summer of 1999. The Plaintiff's Complaint cited Siskind v. U. S., 116 Cl.Ct. 809 (1950). This Court decision states that the U. S. Court of Claims may consider only the allegations contained in the petition (i. e., the Plaintiff's Complaint). This arcane Trial Court practice is not well known to all litigants. The Petitioner pleaded for a different averment

before both lower Courts the citation of Yick Wo v. Hopkins, 118 U.S. 356, 373, 6 S.Ct. 1064, 30 L.Ed. 220 (1886) which states: ". . . a discriminatory application of a statute or regulation is nonetheless unlawful." The Petitioner applies this Court decision to the Trial Court's practice which is based on the Siskin decision, supra, as follows. The terms which relate to the Siskin practice, Black's Law Dictionary sixth edition Page 1286 and rule, Ibid., Page 1331, are synonymous. Therefore, the Petitioner avers that based on the Yick Wo decision the Trial Court Siskin practice is discriminatory and it should be overturned by this Court.

IV.

Both lower Courts disregarded the Petitioner's citation of U.S. Supreme Court law principle decisions to support his legal arguments.

The Petitioner cited 18 different U. S. Supreme Court decisions in presenting his averments before both lower Courts. Both lower Courts disregarded these Petitioner's pleadings which were based on U. S. Supreme Court decisions. The Petitioner

pleaded separately before both lower Courts the citation of Briggs v. Pennsylvania R. Co., 334 U. S. 396, 68 S.Ct. 1039, 92 L.Ed. 1403 (1948) and Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd., 460 U.S. 583, 103 S.Ct. 1343, 75 L.Ed. 2d 260 (1983) for the law principle that once the U. S. Supreme Court decides a law principle that law principle Court decision is controlling on all inferior Courts. Both lower Courts disregarded the Petitioner's averment where he pleaded each applicable Supreme Court law principle before these lower Courts. The Petitioner avers that the lower Courts judicial proceedings are a departure from accepted Jurisprudence proceedings as to call for an exercise of this Court's supervisory power to correct these Judicial errors or in the alternative abuses of discretion.

V.

Courts are required to accept the pleadings of a Pro Se litigant.

The Petitioner proceeded Pro Se before both lower Courts and cited Haines v. Kerner, supra, for this law principle. The

pleadings of a Pro Se litigant are held to less stringent standards than formal pleadings drafted by Attorneys. The Petitioner avers that he argued the law correctly before both lower Courts. The Petitioner's perception is that both lower Courts disregarded the legal arguments made by a civil action Pro Se litigant who is not represented by Counsel. In response to this perception the Appellant's second Petition for Rehearing cited 28 U. S. C. § 1654 **Appearance personally or by counsel.**

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectfully, are permitted to manage and conduct causes therein.

See Claims Court Rule 81. (d) (8) and Federal Circuit Rule 47.3 (a).

VI.

The Trial Court made many judicial errors or in the alternative abuses of discretion in dismissing the Plaintiff's legal action.

The Plaintiff's Trial Court Motion to reconsider stated the Trial Court erred in its many instances of judicial errors or in the alternative many instances of abuses of discretion. The Plaintiff cited in his Trial Court Motion to Reconsider many Court decisions for this alternatively stated averment. For the sake of brevity the Petitioner cites only one Court decision for each of these two legal arguments. For judicial error the Plaintiff cited Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 107 S.Ct. 2182, 2189, 458 U.S. 844, 72 L.Ed.2d 656 (1982). For abuse of discretion the Plaintiff cited Heat and Control, Inc. v. Hester Industries, Inc., 785 F.2d 1017, 1022 (Fed. Cir. 1986).

CONCLUSION

The Petitioner requests that this Petition for Writ of Certiorari be considered by the next session of the U. S. Supreme Court which is scheduled to convene in October 2000. All cases which were selected for oral argument during this fiscal year of the U. S. Supreme Court have previously been heard.

WHEREFORE, the Petitioner respectfully prays that a Writ of Certiorari will be granted.

Respectfully submitted,

Charles L. Meyer

Petitioner Pro Se

355 Pinewood Lane

San Antonio, Texas 78216

(210) 828-1913

CERTIFICATE OF SERVICE

On the eighteenth day of August, 2000 40 copies of the Plaintiff's Petition for Writ of Certiorari for the dismissed Docket No. 00-5035 from the U. S. Court of Appeals for the Federal Circuit was placed in the United States Mail, Certified, Return receipt requested, and served upon the following listed individual pursuant to Supreme Court Rule Number 29.2.

Mr. William K. Suter
Court Clerk
U. S. Supreme Court
1 First Street, N. E.
Washington, D. C. 20543

On the eighteenth day of August, 2000 one copy of the Petitioner's Petition for Writ of Certiorari for the dismissed Docket No. 00-5035 from the U. S. Court of Appeals for the Federal Circuit was placed in the regular United States Mail and served pursuant to Supreme Court Rule Number 29.4.

Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Avenue, N. W.
Washington, D. C. 20530-0001

Charles L. Meyer

Petitioner Pro Se

NOTE: Pursuant to Fed. Cir. R. 47.6,
this order is not citable as precedent.
It is a public order.

United States Court of Appeals
for the Federal Circuit

00-5035

CHARLES L. MEYER,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

ON MOTION

Before MAYER, Chief Judge, PLAGER and LINN, Circuit Judges. PLAGER, Circuit Judge.

ORDER

The United States moves for summary affirmance of the October 27, 1999 judgment of the Court of Federal Claims dismissing Charles L. Meyer's complaint. Meyer opposes.

On October 26, 1999 Meyer filed a complaint in the Court of Federal Claims seeking review of two decisions of the Air Force Board of Correction of Military Records (AFBCMR) denying Meyer's requests for Correction of his Officer Effectiveness Reports (OER) that he received between August 1, 1965 and July 31, 1969. The Court of Federal Claims dismissed the complaint as barred by the doctrine of res judicata and the statute of limitations:

> [Meyer] alleges that he separated from the United States Air Force in 1971, reenlisted in 1972, and ultimately retired in 1975. The complaint states that [Meyer] claimed that the OER's had been improperly prepared, causing him to be passed over twice for promotion. The AFBCMR denied [Meyer] first application for correction in 1971. [Meyer] filed a claim in the district court, challenging the AFBCMR's denial, which was dismissed. See Meyer v. Seamans, aff'd, 478 F.2d 1403 (7th Cir. 1973). This was only the beginning of a series of cases instituted by [Meyer] regarding the same claim. In 1975, [Meyer] filed a similar claim in the Court of Claims, which was also dismissed. See Meyer v. United States, 212 Ct.cl. 537 (1976). [Meyer] subsequently sought two reconsiderations with the AFBCMR, which

was denied on February 5 and April 21, 1997. [Meyer] sought review of the AFBCMR determinations twice more in this court, which dismissed [Meyer's] claims as barred by the six-year statute of limitations, see Meyer v. United States, No. 97-379C, slip op. (Fed. Cl., Nov. 13, 1997), aff'd, No. 98-5082, slip op. (Fed. Cir., October 13, 1998); 28 U.S.C. 2501 (1994), and on res judicata grounds, see Meyer v. United States, No. 99-114C, slip op. (Fed. Cl. Mar. 12, 1999).

Upon close examination of [Meyer's] complaint in the instance case, this court also finds that [Meyer's] complaint is barred by the statute of limitations, 28 U.S.C. 2501, and the doctrine of res judicata.

[Meyer] asserts that the AFBCMR's decisions denying his requests for correction constitute a second injury, which restarts the statute of limitations period. It is well settled law, however, that requests for reconsideration which were not filed within a short time after the initial decision doe not toll the statute of limitations. See Aubre v. United States, 40 Fed. Cl. 371 (1998).

In addition, [Meyer] avers that res judicata is inapplicable where the party has not had a "full and fair opportunity to litigate." However, [Meyer] had a full and fair opportunity to litigate the statute of limitations

> before the court in Meyer v. United States, No. 97-379C, slip op. (Fed. Cl. Nov. 13, 1997).
>
> Accordingly, this court lacks jurisdiction and [Meyer's] complaint is dismissed.

Meyer filed a motion for reconsideration. In denying the motion, the Court of Federal Claims noted that Meyer had filed three actions concerning the same matter and warned that restrictions on Meyer's access to courts "may be appropriate in the future." Meyer appealed to this court.

The United States moves for summary affirmance of a case "is approrpriate, inter alia when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists." Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994) (summarily affirming the Court of Federal Claims' dismissal of a complaint). The United States argues that summary affirmance is appropriate because res judicata and the applicable statute of limitations clearly preclude Meyer from relitigating his claims. Meyer argues

that the arguments of the United States "are a conscious attempt to obfuscate the merits of this Formal Appeal."

We agree with the reasoning of the Court of Federal Claims in dismissing Meyer's complaint. We also note that this is Meyer's third appeal to this court concerning the same claim. Thus, because no substantial question exists regarding the outcome of the instant appeal, the court summarily affirms the judgment of the Court of Federal Claims.

Accordingly,

IT IS ORDERED THAT:

(1) The United States' motion for sumaffirmance is granted.

(2) Each side shall bear its own costs.

FOR THE COURT

APR -3 2000
Date

/S/ S. Jay Plager
/T/ S. J. Plager
Circuit Judge

cc: Charles L. Meyer
John C. Einstman, Esq.

s13

Filed
U.S. COURT OF APPEALS
FOR THE FEDERAL
CIRCUIT

APR - 3 2000
JAN HORBALY
CLERK

United States Court of Appeals
for the Federal Circuit

00-5035

CHARLES L. MEYER,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

O R D E R

A petition for rehearing en banc having been filed by the APPELLANT, and the matter having first been referred as a petition for rehearing to the motions panel, and thereafter the petition for rehearing en banc having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED and it is further

ORDERED that the petition for rehearing en banc be, and the same hereby is, DENIED.

The mandate of the court will issue on May 22, 2000.

FOR THE COURT

/S/ Jan Horbaly
/T/ Jan Horbaly
Clerk

Dated: May 15, 2000

Filed
U.S. COURT OF APPEALS
FOR THE FEDERAL
CIRCUIT

cc: CHARLES L. MEYER
JOHN C. EINSTMAN

MAY 15, 2000

JAN HORBALY
CLERK

MEYER V. US, 00-5035
(CFC - 99-CV-895)

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* Note: Pursuant to Fed. Cir. R. 47.6, *
* this order is not citable as precedent. *
* It is a public record. *
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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 MADISON PLACE, N. W.
WASHINGTON, D. C. 20439

JAN HORBALY
CLERK

TELEPHONE: 633-6550
AREA CODE 202

June 1, 2000

RE: MEYER V. US
Appeal No. 00-5035

NOTICE OF REJECTION

CHARLES L. MEYER'S recently-submitted combined petition for rehearing and suggestion for rehearing en banc does not comply with:

[X] Timeliness (Fed. R. App. P. 40)

[ ] Length (Fed. Cir. R. 35)

[X] Statement (Fed. Cir. R. 35 (b))

[ ] Addendum (Fed. Cir. R. 35)

[X] Other Repetitive petitions for rehearing are not authorized.

The Clerk has been instructed by the Court to reject for filing any paper not in compliance with the Rules of Practice. Accordingly, the original combined petition for rehearing and

suggestion for rehearing en banc is returned herewith. The copies will be held in room 401 for retrieval until June 15, 2000.

Very truly yours,
Jan Horbaly, Clerk
By:

JUN 1 2000
Date

/S/ _____
/T/ Deputy Clerk
(NOTE: This signature is illegible.)

Enclosure

CHARLES L. MEYER
JOHN C. EINSTMAN

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 MADISON PLACE, N. W.
WASHINGTON, D. C. 20439

JAN HORBALY
CLERK

TELEPHONE: 633-6550
AREA CODE 202

JUN 20, 2000

Charles L. Meyer
355 Pinewood Lane
San Antonio, Texas 78216

RE: Meyer v. United States, 00-5035

Dear Mr. Meyer:

This letter is in reference to your motion to reconsider the court's June 1, 2000 notice of rejection of your second combined petition for rehearing and suggestion for rehearing en banc. As the notice of rejection indicated, the court does not permit repetitive petitions for rehearing. Therefore, your appeal in this court is over.

Very truly yours,

/S/ Jan Horbaly
/T/ Jan Horbaly

JH/lh
cc: John C. Einstman, Esq.

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United States Court of Appeals
for the Federal Circuit

00-5035

CHARLES L. MEYER,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

JUDGMENT

Appeal from the United States Court of Federal Claims in 99-CV-895, Judge Nancy B. Firestone.

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED: **AFFIRMED**

ENTERED BY ORDER OF

THE COURT

DATED: April 3, 2000

/S/ Jan Horbaly
/T/ Jan Horbaly
Clerk

ISSUED AS A MANDATE: May 22, 2000